

CITY OF DURHAM

Date: August 24, 2015

To: Thomas J. Bonfield, City Manager
From: W. Bowman Ferguson, Deputy City Manager
Subject: Alternatives to Existing Policy Governing Memorials
in City Rights-of-Way and on City Property

Executive Summary

At their work session on August 6, 2015, the City Council directed staff to develop alternatives to the existing staff policy that governs our management of memorials placed in City rights-of-way and on City property. Council did not provide specific guidance as to how the policy should be revised, but noted that recent controversy in how the policy was used to remove certain memorials compelled them to revisit the policy and explore other possible ways to structure and implement the policy.

Recommendation

The Administration requests guidance on how the existing policy should be revised.

Background

On Monday, December 1, 2014, the City Council adopted a resolution affirming a City Policy Pertaining to Memorials on City Property or Rights-of-Way. Since adoption of the policy, it has been used to guide staff activities in responding to complaints regarding memorials placed in city-maintained rights-of-way. These actions resulted in controversy, prompting interest on the part of the City Council to revisit the policy and consider if it needs to be modified.

Issues/Analysis

The policy, administered by the General Services Department, was reviewed by staff from that department and the City Manager's Office. Staff has developed four potential changes to the policy and enumerated certain pros and cons for each alternative.

- 1) Develop a permit process for memorials. Staff could propose criteria for placement and maintenance, and reserve the right to approve the locations.

Pros:

- Clarifies that memorials are placed with City permission and authority
- Allows City to set reasonable expectations for maintenance and responsibility.

Cons:

- Opens the door for placement of many types of monuments and memorials in the right of way
- City staff would not be permitted to discriminate based on content, purpose, or aesthetics of proposed memorials
- Would be in conflict with the generally accepted restriction that rights-of-way are not to be used for purposes other than governmental use or public benefit.

- 2) Repeal the existing policy and do not replace it. The policy at the core of this discussion is a staff policy, though Council direction was sought and received in crafting and adopting the policy. Prior to its implementation, all memorials in rights-of-way and on public property were not allowed, though admittedly staff practiced broad discretion in deciding whether or not a memorial should be removed. Should the existing policy be repealed, staff would return to this practice.

Pros:

- Prevents the outcome by which complaining citizens are pitted against supporters of memorials.
- Allows for decisions to be made more quickly and account for more situational variables.

Cons:

- Opens the door for less consistent decision making.
- Reasons for memorial removal would not be clearly defined in policy, and therefore may seem less transparent or arbitrary.

- 3) Require more complaints for memorial removal. The existing policy says that memorial removal is triggered when a complaint is received. Council could direct staff to keep a log of complaints, and set some threshold greater than one to trigger memorial removal.

Pros:

- Would respond to complaints that the existing policy gives too much power to one resident expressing a concern about a memorial.

Cons:

- Would create additional workload for staff
- May exacerbate the public perception that memorials are or should be subject to campaigning either for or against their existence by interested parties.

- May increase perceived divisiveness about the policy.
- 4) Allow anonymous complaints. Much of the frustration and disagreement over recent memorial removals resulted in requests for the name and information of anyone who had filed a complaint. The release of that information, as required by public information laws, resulted in the name of the complainant being advertised widely among those who are critical of the complaint, as well as being published in the media.

Pros:

- Allowing staff to receive anonymous complaints would lessen the open conflict that resulted from the removal of several memorials under the existing policy.
- Consistent with current City practice (complainants are not required to provide their name or residency)

Cons:

- Residents who have expressed frustration with the existing policy's structure would not be addressed.
- Staff would have no information about whether the complainants reside in the city or have other pertinent interests to the City's rights-of-way.

Elements from some of these alternatives could be combined to modify the existing policy. Staff is prepared to answer questions about the policy and these alternatives at Council's discretion, and seeks guidance from Council as to which if any modifications are desired.

Attachments

- **City-Wide Policy – GS – 5 –Memorials on City Property**